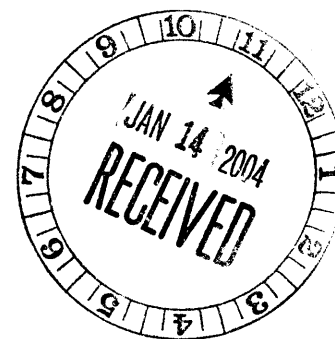LAW OFFICES

FRITZ R. KAHN, P.C.

EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

January 9, 2004

Ms. Rini Ghosh
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423

Dear Ms. Ghosh:

This refers to STB Docket No. AB-863X, City of Venice–Abandonment Exemption–Between Branch Street Yard, MO, and McKinley Junction, IL, and to the Environmental Assessment, which identified you as the preparer and was served January 2, 2004.

On behalf of Terminal Railroad Association of St. Louis, I respectfully must take issue with the Environmental Assessment.

Pursuant to the Board's rules, 49 C.F.R. 1105.7(c), the environmental report accompanying an abandonment Notice of Exemption must have been prepared after consultation with the designated Federal or state agencies, the names and addresses of which appear in the Section of Environmental Assessment's Contact List. In the instant proceeding, it is evident that the regulation's requirement was not observed. The Environmental Report of the City of Venice, dated October 27, 2003, obviously was prepared without any of the agencies subsequently served with copies of the Environmental Report having been consulted by the City of Venice "far enough in advance to afford those agencies a reasonable opportunity to provide meaningful input." It is apparent from reading the Environmental Report that the no representative of the City of Venice wrote or spoke by telephone with any of the agencies before October 27, 2003. The Environmental Report, accordingly, is deficient and fails to provide an appropriate basis for the Environmental Assessment.

While I appreciate that you prepared the Environmental Assessment based on the representations in the Environmental Report, which, as I just have noted, is procedurally defective, the Environmental Report is substantively flawed, as well, and its representations should not have been relied upon by you in preparing the Environmental Assessment.

As detailed in the Comments of Terminal Railroad Association of St. Louis, filed December 29, 2003, the text of which I ask to have incorporated by reference, the City of Venice is not, and never has been, a rail carrier, and, hence, it cannot avail itself of the two-year-out-of-service exemption of 49 C.F.R. 1152.50. In other words, the Notice of Exemption of the City of Venice is void *ab initio*, and its status is not enhanced by the attachment of an Environmental Report of doubtful validity.
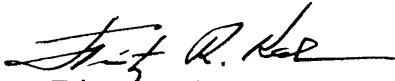
In fact, the railroad line in question, between Branch Street Yard, MO, and McKinley Junction, IL, which the City of Venice purports to seek the Board's authorization to abandon, long has been abandoned, pursuant to the Interstate Commerce Commission's Decision and Notice of Interim Trail Use or Abandonment in Docket No. AB-290 (Sub-No. 139X), <u>Norfolk and Western Railway Company–Abandonment Exemption–In Madison and St. Clair Counties, IL, and the City of St. Louis, MO</u>, served April 25, 1994. Pursuant to 49 U.S.C. 10501(a), the Board, however, is vested with authority only over property used for transportation by a rail carrier; the agency lacks jurisdiction to deal with an abandoned trestle which no longer is railroad property.

Therefore, the conclusion that the right-of-way in question may be suitable for other public uses or for rail banking under the provisions of the National Trails System Act, 16 U.S.C. 1247(d), is unfounded and erroneous and needs to be stricken from the Environmental Assessment.

Two copies of this letter are enclosed. A third copy is enclosed on which I would ask you to acknowledge your receipt of this letter and to return to me in the enclosed stamped and self-addressed envelope.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

Fritz R. Kahn

enc.
cc: Charles H. Montange, Esq.
       Mr. Jerry Kane